



NEWSLETTER  
SUMMER 2026

# Real Insight

*A regular email from Jones Day's UK Real Estate team.*

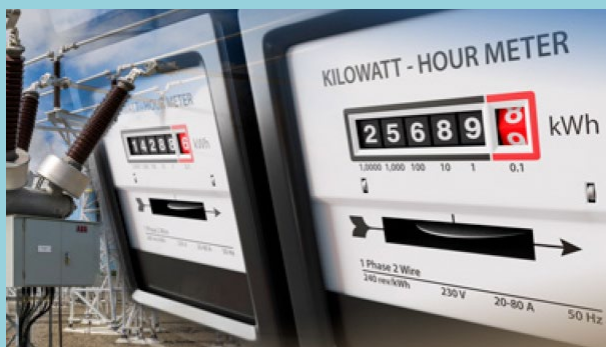
## INTRODUCTION

Welcome to the summer 2026 edition of *Real Insight*, our UK real estate update.

In this edition, we look at the growing trend of "behind-the-meter" energy in the United Kingdom and discuss the recent Datacloud Global Congress. We explore a first in the real estate finance market before commenting on the implications of the recent *Hoffman* High Court case for term sheets and warranties in real estate private equity transactions. We analyse the ban on upward-only rent reviews in commercial leases, and we review the new rules which will impose greater transparency requirements for land options and pre-emptions. We conclude in the planning world, where we look at the new national scheme of delegation, which is going to limit planning applications being taken to planning committees.

We hope that you enjoy this edition. Have a great summer.

## ENERGY



### Current Thinking: Why Behind-the-Meter Energy is Reshaping UK Real Estate

Feel a bit awkward when you hear people referring to "behind-the-meter energy" and you don't know what it is? Or why it's important? Then fear not, as [Michelle Davies](#) and [Martin Stewart-Smith](#) explain what you need to know to impress your colleagues.

[Read our related Commentary >>](#)

## DATA CENTRES

### Datacloud Global Congress

Members of Jones Day's Data Centre team were pleased to be at this year's Datacloud Global Congress in Cannes on 2–3 June 2026, a key annual gathering for the data centre sector, writes [Ryan Hill](#).



**DATA CLOUD**  
**GLOBAL CONGRESS**

The Congress provided the forum to discuss the opportunities and challenges shaping data centre development, investment and financing across the United States and Europe. As well as holding a series of

individual meetings with data centre operators and investors during the Congress, Jones Day lawyers hosted a reception for clients and contacts on 2 June 2026. The reception brought together more than 50 guests from across the Data Centre and Digital Infrastructure market, including investors, operators, lenders, advisers and technology-led businesses.

[Brian Sedlak](#), Jones Day's global Co-Practice Leader for Real Estate and the Energy Transition & Infrastructure team, also moderated a panel hosted by Equinix, which explored public perceptions of the sector and practical steps the sector can take to further understand and address those perceptions.

The Congress discussions reflected the extent to which data centre projects now sit at the intersection of real estate, energy, infrastructure, planning, finance and technology, and require co-ordinated advice across jurisdictions. They also underlined the continued momentum behind the sector, as market participants focus on delivering capacity, securing power and navigating evolving regulatory issues.

Datacloud Global Congress formed part of a busy period for our Data Centre team, with events hosted in Jones Day offices in Paris and Madrid, culminating in the Global Digital Infrastructure Forum held in our Chicago Office, which included a fireside discussion between Tag Greason, co-CEO of QTS Data Centers, and Jones Day partner [Michael Gray](#).

## REAL ESTATE FINANCE



### Real Estate Finance in Spain: Bond Structures with a *Comisario*

Our Real Estate Finance team in Madrid has closed an innovative bond financing that overcomes several limitations of traditional real estate lending in Spain. [Iván Martín-Barbón](#) and [Matt Trafford](#) explain how the first transaction of its kind in the Spanish market was done.

#### The Challenge

Spanish law does not recognise the concept of a trust or security trustee. In multi-lender real estate financings, each lender must be individually registered as a mortgage creditor at the Land Registry. This causes a number of difficulties, including:

- Any change in the group of lenders (for example, where a lender sells its participation) requires a formal amendment at the Land Registry.
- The creation, novation and transfer of mortgages trigger transfer taxes, which can be significant depending on the region in which the property is located.

#### The Solution

Our team has developed a structure in which the borrower issues bonds subscribed by the lenders under a bond subscription agreement. The agreement mirrors the economic terms of a conventional real estate loan. The key innovation is the appointment of a *Comisario*—a figure under the Spanish Companies Act who performs a role equivalent to that of an English law security trustee. The *Comisario* holds the mortgage on behalf of all the lenders and is the sole creditor registered at the Land Registry.

#### Key Advantages

**Immediate Mortgage Registration.** Because the *Comisario* is the sole registered creditor, the mortgage can be registered at closing without delay, with no need for interim arrangements pending syndication of the loan.

**Simple Transfers Without Tax.** Transfers of bonds between lenders do not require any amendment at the Land Registry and do not trigger transfer taxes. This significantly reduces the cost and complexity of adding or replacing lenders and of managing loan portfolios.

**Back-Leverage and Capital Markets.** Bonds held in balance offer the lenders enhanced collateral eligibility for repurchase agreements, significant risk transfer and back-leverage structures. An enhanced format (with clearing, listing and an international securities identification number) is also available for larger transactions.

**Familiar Documentation.** The bond subscription agreement is based on well-established Loan Market Association-style documentation and can be governed by English or Spanish law, ensuring a familiar framework for international lenders.

### **A Proven Structure**

Jones Day has closed the first transaction using this structure for a European private credit fund. The mortgage in favour of the *Comisario* has been fully registered at the Land Registry, confirming that the structure works in practice. We believe this model offers significant potential for bank lenders and private credit providers seeking greater flexibility and efficiency in their Spanish real estate lending.

## **REAL ESTATE PRIVATE EQUITY**

### **Hoffman—What It Means for Your Term Sheets and Warranties**

In *Hoffman & Another v Finalto Group Ltd & Another* [2026] EWHC 921 (Comm), the High Court confirmed that an equity term sheet can create binding obligations even where definitive documents are never agreed. It also confirmed that warranties in a management warranty deed can constitute actionable representations notwithstanding non-reliance wording—with the potential, in principle, to take a claim outside negotiated liability caps. [Laura Pembridge](#) explains.



### **What Happened**

Gopher acquired Finalto, a fintech business, and agreed to provide equity participation to two senior managers under an equity term sheet, with definitive equity documents to follow completion. They never did. When Gopher dismissed the managers and denied the term sheet was binding, the managers sued; Gopher counterclaimed for fraudulent misrepresentation based on warranties in a management warranty deed ("MWD").

### **The Term Sheet Was Binding**

The Court held that language stating the term sheet was "legally binding, subject to a definitive agreement" created immediate, enforceable obligations. The phrase "subject to a definitive agreement" meant obligations would be superseded by later definitive documents if and when agreed—not that they would bite only once those documents were in place. The emphasis in the term sheet on the formalities of counterparts and delivery, and its law and jurisdiction provisions, reinforced this reading. On the facts, the binding nature of the term sheet did not translate into a valuable claim, as the Court held that the equity the claimants were promised would have had nil value.

### **Warranties as Representations**

The Court held that certain statements in the MWD also constituted actionable representations,

notwithstanding non-reliance wording—significant because misrepresentation claims can fall outside negotiated liability caps. Three factors drove this: (i) the informational nature of the statements (disclosing matters unlikely to be within the buyer's own knowledge); (ii) the sequencing of execution (drafts were seen before final documentation was agreed, and the MWD and disclosure letter were signed before the share purchase agreement, so the statements could have induced entry into it); and (iii) the MWD's own drafting, which excluded liability only for non-fraudulent misrepresentation, thereby implicitly acknowledging that representations existed within the deed. The counterclaim ultimately failed on the facts: the representations were not shown to be untrue or dishonestly made.

### What This Means for You

The practical lessons for sponsors and fund managers are threefold:

1. **A term sheet that says it is legally binding will be treated as such.** "Subject to definitive documents" wording is not a get-out; it means the term sheet will be superseded, not that it is conditional. If specific provisions are intended to be non-binding or to depend on further agreement, that must be spelt out expressly in the term sheet.
2. **Walking away from a binding term sheet carries real legal risk, but recovery turns on value.** Where a term sheet is enforceable, a unilateral decision to halt progress on the definitive documents—including an instruction to solicitors to cease work—may amount to repudiatory breach. Here, that exposed the party that walked away (the sponsor) to a repudiation claim. However, the recoverable loss will depend on the value of what was promised, and a binding term sheet does not guarantee a substantial damages award. Any decision to depart from an agreed term sheet should nonetheless be taken with that exposure in mind.
3. **Standard non-reliance wording in a warranty deed may not be enough.** If an entire agreement clause excludes reliance only on statements not incorporated into the transaction documents, a court may read that as acknowledging that incorporated statements—i.e. the warranties themselves—can operate as representations. To close the gap, the clause should expressly exclude all pre-contractual representations and confirm that no party has relied on any statement as a representation. Where that drafting is absent, a buyer may pursue a misrepresentation claim outside the negotiated liability cap—a material exposure for sellers giving warranties on a sale. The outcome on this point was heavily dependent on the specific wording of the MWD, so it is important to ensure that non-reliance wording is robust.

## COMMERCIAL LEASES



### The Ban on Upward-Only Rent Reviews

In July last year, we brought you news of the then-proposed ban on upward-only rent reviews in commercial leases ("[Shock and Law: UK Government's Surprise Proposal to Ban Upward-Only Rent Reviews](#)"). On 29 April 2026, The English Devolution and Community Empowerment Act 2026 was passed. [Jaskie Chana](#) and [Kirsty Rogerson](#) provide a recap and update on what to expect.

The government's stated aim is to help the high street retail sector, but the ban applies to any business tenancy (regardless of whether it is

contracted out of the security of tenure protections in the Landlord and Tenant Act 1954). So, it will also affect offices, warehouses and other commercial premises.

The ban will apply to those rent review clauses where, on the date the lease is granted, the reviewed rent is not yet known and cannot be determined. If the rent review clause contains an upward-only provision, it will be of no effect; the landlord will not be able to enforce that provision, and the tenant will not be liable to pay the higher amount. So upward-only open market reviews and upward-only index-linked rent reviews will be caught, as will upward-only turnover rent reviews.

Fixed or stepped rent increases which are specified at the outset of the lease will still be permitted. Rent reviews to current market level (or based on movements in a government index) will be permitted if the passing rent could go up or down.

There will be a new right for tenants to trigger any rent review provisions in the lease, which they may wish to do in a falling rent market.

The commencement date for the new law to take effect is yet to be confirmed, but it is expected to be in 2027. Generally, pre-existing leases and pre-existing agreements for lease (as at the commencement date) will not be caught by the new law, but leases granted pursuant to some tenancy renewal arrangements entered into on or after 17 March 2026 will be caught.

For commercial tenants, on the face of it the change is good news. For landlords and their investors, the concern is likely to be mitigating the lack of certainty this brings to their rental assumptions. That may take the form of seeking higher initial rents and increasing use of fixed, stepped rent increases. It remains to be seen whether tenants may be willing to agree to those, perhaps in return for more or greater tenant incentives such as rent-free periods.

## OPTIONS AND PRE-EMPTIONS

### New HM Land Registry Requirements from 6 April 2027

New rules are being introduced to require greater transparency in respect of options, pre-emptions and other "contractual control rights" over registered land. [Richard Adams](#) and [Arabella Dobson](#) look at what is in store.

[Read our related Commentary >>](#)



## PLANNING



### National Scheme of Delegation

In January, we wrote about the reforms under the Planning and Infrastructure Act 2025 ("[UK's Planning and Infrastructure Act 2025: Planning Aspects](#)" and "[UK's Planning and Infrastructure Act 2025: Infrastructure Aspects](#)"). One of the major planning reforms under the 2025 Act is the national scheme of delegation for decisions by local planning authorities ("LPAs"). The scheme will limit the decisions which LPAs can take by planning committee, so that most

decisions must be taken by the LPA's officers. In June, the national scheme took shape, with a draft statutory instrument laid before Parliament and statutory guidance being issued by the government. [Will Land](#) summarises the scheme.

## Applications that Must Be Taken by an Officer

The draft statutory instrument (which we anticipate will be finalised in July) provides that "schedule 1 applications" must be determined by officers; the LPA will not have any discretion to decide them by committee. Many of these applications are relatively minor, including householder applications and small residential and commercial developments, but they also include reserved matters applications in respect of outline permissions if the outline permission does not exceed 499 dwellings or 49,999 square metres of floorspace.

## Applications that May Be Determined by Committee or by an Officer

More major applications will be classed as "schedule 2 applications". Here, the statutory guidance (to which the LPA must have regard) is clear that there is a presumption that even these applications will be determined by the LPA's officers unless the LPA's nominated planning officer and the chair of the planning committee agree that the application should be referred to committee, because in their view it raises: (i) one or more issues of economic, social or environmental significance to the local area; or (ii) one or more significant planning matters having regard to the development and any other material considerations. As a potential example of (i), the guidance refers to an application for outline planning permission for a large multi-phase residential development allocated in the development plan. It will no longer be possible to trigger a referral to committee through a request by the relevant ward councillor or due to the number of objections an application receives.

## Disagreements Between the Nominated Officer and the Chair of the Planning Committee

What happens if there is a disagreement between the nominated officer and the chair of the planning committee as to whether a schedule 2 application should be referred to the committee?

The guidance is clear that in this scenario, the application must be determined by officers. In practice, we expect it will be difficult for the nominated officer to refuse a referral if the chair of the committee is of the view that the referral criteria are met.

## Timing

The national scheme of delegation will come into force on 31 October 2026. LPAs will need to amend their constitutions before then to bring them into line with the new rules.

## Consequences of Breach

The guidance makes the rather pointed comment that LPAs who grant permissions via committee contrary to the regulations may see those permissions challenged by way of judicial review.

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